



POLICE DEPARTMENT

June 8, 2012

MEMORANDUM FOR: Police Commissioner

Re: Detective Michael Dye
Tax Registry No. 924316
Narcotics Borough Bronx
Disciplinary Case No. 2011-3810

The above-named member of the Department appeared before me on January 27, 2012, charged with the following:

1. Said Detective Michael Dye, assigned to Narcotics Bronx Borough [*sic*], while on-duty, on or about February 9, 2011, was absent from said assignment without permission or police necessity for approximately thirty (30) minutes.

P.G. 203 05, Page 1, Paragraph 2 – PERFORMANCE ON DUTY – GENERAL
REGULATIONS

The Department was represented by Javier Seymore, Esq., Department Advocate's Office, and Respondent was represented by Adam Etman, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

COURTESY • PROFESSIONALISM • RESPECT

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Sergeant Edward Taveras as its sole witness.

Sergeant Edward Taveras

Taveras has been a member of the service for over 13 and a half years and has been a Sergeant since September of 2004. Currently, he is a team supervisor of the buy and bust team in Narcotics Borough Bronx (NBBX). He has been at his current assignment for over four years. As the team supervisor, Taveras is in charge of field operations during buy and busts, has to make sure that narcotics complaints are investigated properly, and ensures that investigators conduct search warrants.

Taveras was working a 9:40 a.m. to 6:15 p.m. tour on February 9, 2011, doing a buy and bust operation in the 41 Precinct. Prior to going out to the field, Taveras had a tactical meeting at 10:00 a.m. with the team. All of the members, consisting of "Detective Marchenna, Valentine, Massaro, Ramos, Cabrera, [Respondent], two undercovers" and Disimone were present at the meeting. In the meeting, they discussed "the places where we were going to go, safety and so on." Taveras made the assignments for his team members on that day. Respondent was assigned to the prisoner van, "but prior to that, he had actually had to go to court with the undercovers and then was supposed to be in the field after that." After Respondent went to court, he returned to the command and another tactical meeting was conducted. According to Taveras, it was clear that Respondent was responsible for the prisoner van on that particular day after he returned from court.

At 11:30 a.m. that day, Taveras and his team went to the field to commence the operation. By then, Respondent had already been dropped off to court. By 1:00 p.m., the team had made eight arrests. At 2:00 p.m., they reconvened at the 41 Precinct parking lot for a "re-tac," another tactical meeting. Respondent was at the "re tac" meeting. The team then redeployed and additional arrests were made. At 3:40 p.m., the team, including Respondent, proceeded to the 41 Precinct to process the arrests.

According to Taveras, it was clear that once the arrest process was completed, Respondent's assignment was to transport the prisoners because "once the buy and bust operations were terminated at [2:20 p.m.], [Respondent] proceeded to jump in the prisoner van." Respondent's job was to be in charge of the prisoner van and he was also tasked with fingerprinting the prisoners at the precinct. At 7:00 p.m., Taveras told the desk officer that he was stepping out with three detectives to conduct confidential informant (CI) buys. However, the prisoners were not yet ready to be transported to Bronx Central Booking because they were still waiting on the fingerprints [to be transmitted and processed on-line].

Taveras was out in the field from 7:00 p.m. to 8:35 p.m. When he returned to the 41 Precinct, he told Marchenna to get ready to transport the prisoners. Taveras was looking for Respondent but did not find him. He asked Cabrera if he had seen Respondent or knew where he was, but Cabrera did not. Taveras proceeded to look for Respondent but still did not find him. He looked in the lounge area. He called Respondent's cell phone numerous times but could not reach him. Taveras said he was dialing the correct number, but did not recall a voicemail message. Taveras then assigned two other detectives whose original assignments did not include prisoner transport to do

the transport. According to Taveras, it is important for the prisoners to get to Bronx Central Booking for lodging.

Taveras was able to locate Respondent once everyone was ready to leave the precinct to go back to NBBX. Taveras made an 8:40 p.m. notation in his memobook regarding Respondent being off post. Taveras asked Respondent where he was, and Respondent replied that he was in the lounge. Taveras then told Respondent to go back to the command and end his tour. At no time, between Taveras going out in the field at 7:00 p.m. and returning to the precinct, did he have any communication with Respondent regarding Respondent taking a personal. It was the team's procedure that when an individual wanted to take a personal, he had to let Taveras know. Taveras was never notified that Respondent was taking any type of personal. As far as he recalled, Taveras never had any problem with Respondent taking a personal without his permission in the past.

This incident stood out to Taveras because the prisoners had been at the 41 Precinct from 3:40 p.m. until 8:25 p.m. and "everything was already done," so the prisoners needed to be transported to Bronx Central Booking. Respondent's failure to let Taveras know that he was taking a personal slowed down the arrest process and the transport of the prisoners to Bronx Central Booking within a reasonable amount of time.

During cross-examination, Taveras said that in addition to looking in the lounge, he looked for Respondent "where he was supposed to be, by the prisoners' cell and he was not there." They have their own separate processing room which "is basically a square box with a couple computers and three desks." It is right behind the arrest

processing room and the prisoners' cell. When Taveras came back from the CI buys, he used the rear parking lot entrance. Taveras was upset that Respondent was not there.

After Taveras had the initial conversation with Cabrera, Cabrera came to Taveras at a later point and spoke with him concerning Respondent's whereabouts. Cabrera told Taveras that Respondent had told him that he was stepping out. Taveras did not exactly recall the conversation. By that point though, Taveras had already sent the prisoners to Bronx Central Booking and Respondent had already appeared. Taveras said that Cabrera was not asked to search for Respondent. Taveras did not recall if he asked other members of the team to look for Respondent.

Taveras did not recall exactly what he said at his March 9, 2011, official Department interview, but after being shown a synopsis worksheet and told that he indicated in his interview that he and other members of the team looked for Respondent, he said, "Yes, that's what it says here." Taveras admitted that the synopsis of the interview indicates that Taveras only called Respondent and he did not look for him.

During redirect examination, when asked what the procedure is according to the Patrol Guide when a member has to report to a superior officer, Taveras said, "Any breaks, anything pertaining to where the location is that he is going to go, he has to notify...[h]is immediate supervisor." That day, Taveras was Respondent's immediate supervisor. At no point did Respondent indicate, ask, or tell Taveras that he was taking a personal. If he did, then Taveras would have been able to locate him.

Respondent's Case

Respondent called Detective Danixon Antonio Cabrera as a witness and testified in his own behalf.

Detective Danixon Cabrera

Cabrera, currently assigned to PBBX, was appointed to the Department on July 2, 2001. On February 9, 2011, Cabrera was assigned as the arresting officer on a buy and bust operation. There were arrests that day, but Cabrera did not remember how many. He and the whole team, including Respondent went to the 41 Precinct for arrest processing. Cabrera did not know what Respondent's assignment was that day, but Respondent did assist in the arrest processing.

Cabrera said that Respondent told him that his cell phone was dead and that he needed to charge it. In response to being asked, "Did [Respondent] charge his cell phone," Cabrera replied, "We have like a room in the 41 [Precinct] that they assigned us and we left a charger." Cabrera did not recall Respondent mentioning how he was feeling.

Taveras was, and still is, Cabrera's immediate supervisor. Cabrera said that Taveras not only conducted buy and bust operations, but after, he put himself out to do buys with the CIs. When Taveras returned to the precinct, he asked Cabrera where Respondent was. According to Cabrera, "at this time, I was doing so much paperwork, running around and trying to get all of my stuff together," that he told Taveras that he did not know where Respondent was. After that, Taveras just wanted to know where Respondent was located. Cabrera told Taveras at a subsequent time.

During cross-examination, Cabrera said that Respondent told him that he was going to the "muster room," which was next to the lounge. Cabrera said that, based on his understanding of the Patrol Guide, when someone goes out on a personal and takes extended time away from his assignment, he must report to his immediate supervisor and also the desk officer if it is in the confines of a precinct. Cabrera said that he was not Respondent's supervisor and was not serving as the desk officer on that date.

During questioning by the Court, Cabrera said that Taveras never asked him to look for Respondent. Cabrera told Taveras about the cell phone later on when he remembered. This was about 20 minutes later. Cabrera spent about four hours doing the arrest processing in the command.

During redirect examination, Cabrera said he did not remember what else he told Taveras when he remembered about the cell phone. Cabrera told Taveras that Respondent told him that he was going to be in the lounge.

Cabrera did not know if Respondent's portion of the arrest processing was completed when he left to go to the lounge. Cabrera also said that if the arrest processing was completed, Respondent would not have been able to transport the prisoners to Bronx Central Booking without Taveras being there because a sergeant has to be present to authorize that.

Cabrera said that you are allowed to take a personal as long as you document it. Cabrera said that he would consider going to the bathroom as personal time. He lets his supervisor know where he is at when he goes to the bathroom, just in case he needs him.

During recross examination, Cabrera said that he did not recall Taveras sending anyone from his team out to look around the precinct for Respondent.

During questioning by the Court, Cabrera said that, when Taveras came back, he was finished with his part of the arrest processing but some of the things were still coming back, such as the "NYSID numbers."¹

During further cross examination, in response to being asked whether Respondent was ready to transport the prisoners when Taveras arrived back at the precinct, Cabrera replied that the sergeant was looking for him.

Respondent

Respondent has been with the Department since 1999. He has worked in his current command, NBBX, for approximately seven and a half years. At NBBX, he was initially an undercover officer for five and a half years and then became an investigator. According to Respondent, on his last evaluation, he was rated a 4.0, above average. Subsequent to being charged in this case, his Activity Log "went missing."

On February 9, 2011, Respondent was working at NBBX and was assigned to the prisoner van. This entailed picking up any prisoners that were arrested that day, detaining them and bringing them to the command. This also included doing all of the related paperwork for arrest processing, fingerprinting the prisoners and subsequently transporting them to Bronx Central Booking. This was in conjunction with the buy and bust operation. Taveras was his immediate supervisor that day. On that operation, there were prisoners in the prisoner van. Respondent did not know how many, but there were more than five at the end of the buy and bust operation. He went to the 41 Precinct for

¹ New York State Identification numbers are issued to anyone who has contact with the New York State Division of Criminal Justice Services. Name and pedigree checks are conducted during arrest processing to determine if there are already existing NYSID numbers and any associated outstanding warrants, arrest records, parole/probation data, etc.

arrest processing and assisted in the arrest processing, including securing the prisoners' property, having them sign prisoner receipts, and fingerprinting them.

When Respondent was done with his job, he did not know where Taveras was. Respondent learned of Taveras' whereabouts from Cabrera, who informed Respondent that Taveras and some other team members went out to do CI buys. While Respondent was talking with Cabrera, he noticed his phone was dead. Cabrera had a similar model phone and so he asked Cabrera if he minded recharging Respondent's phone. Cabrera agreed Respondent then indicated to Cabrera that he was going to the lounge because he was not feeling too well. Cabrera was the arresting officer that day so he stayed at the desk. When Respondent left to walk down the hall, Cabrera was at the computer with Respondent's phone.

Respondent said that if you enter from the rear of the 41 Precinct, there are two halls; one hall is to the right where the administration offices are and also where they do paperwork when one is arrested, and "if you look to the left, without moving, you can see in the other hall, [where] there is the muster room, custodian room, [and] the male and female bathrooms."

Respondent admitted that he was not only in the lounge, but also went to the bathroom a few times. However, he never physically left the precinct or even the floor. He had the opportunity to go to the other bathrooms, but he wanted to make himself accessible so he used only that bathroom on the first floor.

According to Respondent, later on Cabrera came into the lounge and said that Taveras said for Respondent to go home. Respondent was confused because he did not know the basis for that statement. He asked, "Is there more to that than just go home?"

and Cabrera replied, "No, he just said to tell you to go home." Respondent followed Cabrera out of the room and saw Taveras. Respondent asked Taveras, "Sarge, what's going on?" and Taveras said, "[G]o home." According to Respondent, Taveras would not have any further conversation with Respondent after that.

Respondent did not want to seem combative with Taveras, so Respondent backed off the conversation and went to look for Cabrera for clarification because, at this point, he was still confused about what happened and what was going on. In the arrest processing room, Respondent asked Cabrera what was going on, and Cabrera replied that Taveras was upset with Respondent, and told Respondent to go talk to Taveras, adding that Taveras was mad at Respondent.

Afterwards, Respondent saw Taveras at the precinct desk and Respondent asked to speak with him. Respondent, at that point, still had not left the 41 Precinct. Taveras came from behind the desk and they went to the rear of the building. Respondent asked what was going on and Taveras replied that he was looking for him. Respondent informed Taveras that he told Cabrera where he was and that he was here in the building. Taveras replied that he could not find Respondent, to which Respondent said that is a communication issue that Taveras has with Cabrera. Respondent once again asked what he did to make Taveras upset with him, and Taveras "went back out to the conversation with [Cabrera]". Respondent replied, "With all due respect, I am not challenging you, I am confused" about what he did to make Taveras upset with him. This conversation kept going with Taveras giving the same reply referring to Cabrera. Finally, Taveras said that he is just sending Respondent home anyway. According to Respondent, at this point,

Taveras made a declarative statement and Respondent was not going to challenge him, so he went home.

Respondent worked the following day, as did Taveras, but nothing was said. The following week, Respondent's delegate approached him and said that he was getting a Command Discipline for being absent without leave (AWOL). Respondent did not initially connect this to that day until Respondent went to the Integrity Control Officer's office, and he figured out what it was about. Respondent's definition of AWOL is "absent or unauthorized leave," which meant that he left his post and went some place that no one could find him. On February 9, when he arrived at the 41 Precinct with the prisoner van, Respondent considered his post to be the 41 Precinct.

Taveras had been Respondent's supervisor for about a year up to that point, but is not currently his supervisor. According to Respondent, it was not a practice for a member of his team to routinely tell Taveras that he was going to the bathroom or going to the lounge. Respondent said that from the time he worked with Taveras, when they were in the precinct, no one had told Taveras that they were going from one room to another room and that it was done all the time. Respondent said that he never left the building so he never thought to call Taveras to tell him that he was still in the building and was just going to the bathroom because Respondent told Cabrera where he was. Respondent said that he made no effort to conceal where he was.

When the arrest processing was complete, Respondent was not able to transport the prisoners to Bronx Central Booking because in order to transport from one location to another, he had to have a supervisor's authorization, in this case Taveras'. However,

Taveras was not there when the arrest processing was completed and, thus, Respondent was not able to go anywhere and he had to wait for Taveras.

Respondent's phone was charging with Cabrera in the arrest processing room. Respondent said that if he was AWOL, he would not have left the precinct without his cell phone, even for 30 minutes because he would take it to make himself accessible.

During cross-examination, Respondent said that if he had disappeared or was unavailable, then there would be a difference between that and going to the bathroom. He said that the Patrol Guide states that if he were unavailable, then he would tell his immediate supervisor, but Respondent reiterated that he was available. Respondent admitted that Cabrera is not his boss.

Respondent stated that he was available to transport the prisoners. He also said that he did not call Taveras and tell him that he was leaving one room to go to another room. Respondent said that he did not recall whether the prisoners were already transported when Cabrera found him because he was in a state of confusion trying to find out what was going on with Taveras. Respondent did not tell Taveras that he could not make contact because his phone was dead because he did not know what Taveras was upset with Respondent about.

Respondent said that no one found him because they did not look for him, and "it is hard to miss someone not looking for" him because it is his job to look for people and he can tell when someone is looking for him.

During redirect examination, Respondent said that his definition of "off post" is if he had left the 41 Precinct without telling his immediate supervisor, which he did not. Respondent was in the lounge, which was about 100 feet from the arrest processing room.

He did not go anywhere else besides the bathroom and lounge. He chose to stay on that floor so he could easily be located.

During recross-examination, Respondent said that he got his definition of off post from the Patrol Guide.

During questioning by the Court, Respondent said he did not recall how many prisoners he had on that date, but there were more than five. All of the prisoners were transported to the 41 Precinct. Respondent said that the time that it would take to process the arrest of five prisoners varies "according to how they print. Some of the prisoners have a history of substance abuse and so their fingerprints are a lot harder to get, some of them are not as cooperative or forward with sharing information so we enter them into our system," and thus the time varies. One arrest takes approximately 45 minutes. In terms of doing the paperwork and the fingerprinting, the team split up the responsibilities; it was not just Respondent because he was in charge of the prisoners and the transport.

Respondent did not know how much time was spent between the bathroom and the lounge, but the bathroom had only one stall and was not very clean, so he went in and came out. He stayed in the lounge area because it was right next to the bathroom. No one told Respondent that they were looking for him on that day.

During further recross examination, Respondent said he went to the bathroom because he was not feeling well. He did not return to the arrest processing room and remain there until Taveras came back because it was not a thought of his since they were not confined to a room, but the entire 41 Precinct.

FINDINGS AND ANALYSISSpecification No. 1

Respondent stands charged herein in that while assigned to Narcotics Borough Bronx, while on duty, on or about February 9, 2011, he was absent from said assignment without permission or police necessity for approximately thirty (30) minutes. Evidence adduced at trial established that on the incident date, Respondent was working a buy and bust operation within the confines of the 41 Precinct. He was working with his field team and his supervisor was Sergeant Taveras. It is not in dispute that during that tour, Respondent had to report to court. It was also not in dispute, that upon his return from court, he would be assigned to the prisoner van. Both Respondent and Taveras testified that this entailed transporting the prisoners to the command for arrest processing, fingerprinting them and upon completion, transporting them to Bronx Central Booking.

Respondent testified that once the prisoners were transported to the 41 Precinct for arrest processing, their property had to be secured, they had to sign prisoner receipts and get fingerprinted. Respondent testified that he had at least five prisoners on that date. He also estimated that arrest processing took at least 45 minutes per prisoner depending on what the fingerprinting revealed.

Respondent said at some point that night, he was completed with the arrest processing of the prisoners, but Taveras was not in the command. He learned that Taveras and other team members went out to do CI buys. Respondent said he noticed that his cell phone was dead and asked Detective Cabrera if he could use his charger. Cabrera said yes so he placed his cell phone on the charger. Respondent said he also told

Cabrera that he was going to the lounge because he was not feeling well. Respondent stated that Cabrera was the arresting officer that day and he stayed at the desk.

Respondent testified that he alternated between the bathroom and the lounge at the 41 Precinct at that time. Both were on the first floor of the station house and he never left the command or the first floor. Sometime later, Cabrera came into the lounge and told Respondent that Taveras said for him to go home. Respondent, confused, went to the desk to speak to Taveras. Taveras informed him that he had been looking for him. Respondent told Taveras that Cabrera knew where he was at, that he never left the building. They could not resolve their differences and so Respondent followed Taveras' direction and reported to NBBX and signed out from duty.

Taveras testified essentially the same as Respondent. He stated that they arrived at the station house about 3:40 p.m. following the buy and bust operation to process the arrests of the prisoners. At about 7:00 p.m., Taveras told the desk officer that he was stepping out with three detectives to conduct confidential informant buys. He noted that the prisoners were not ready for transport to Bronx Central Booking at that time because they were still awaiting fingerprints. Taveras noted in his Activity Log that he was out in the field until about 8:35 p.m. When he arrived at the station house, he informed one of his detectives to get ready to transport the prisoners. Taveras said he was looking for Respondent but could not find him. He asked Cabrera if he knew where Respondent was and he said that he did not. Taveras also called Respondent's cell phone, but did not reach him. He could not recall if there was a voicemail message. Based on his inability to locate Respondent, Taveras reassigned two detectives to the prisoner van to transport the prisoners to Bronx Central Booking.

Taveras testified that once everyone was ready to leave, Respondent was located. Taveras had already noted in his Activity Log that Respondent was off post at 8:40 p.m. He asked Respondent where he was, and Respondent stated that he was in the lounge. Taveras told Respondent to go back to NBBX and end his tour. He explained that he was never notified that Respondent was taking a personal and as the supervisor, he was supposed to be notified. Taveras stated that he looked for Respondent where he was supposed to be, in the prisoner cell area. He said the team also had their own processing room which contained a few computers and three desks.

Taveras said it was not until after he sent two other detectives to Bronx Central Booking with the prisoners that Cabrera came back to him and said something to the effect that Respondent stepped out, but he could not recall the conversation. Taveras said that he did not have Cabrera look for Respondent and he did not recall if he had any other members of the team look for him either.

The seminal issue before the Court is whether Respondent was absent from his assignment without permission or police necessity. Respondent testified that his cell phone was dead at the time that he began to not feel well at the command. He went to the desk and one of his team members (Cabrera) was there who he told about his condition. Respondent said he went from the lounge to the bathroom and never left the floor. It was his understanding that once he was in the station house, he did not have to report his every movement to his supervisor because the entire team was in the station house at that time and never reported to a supervisor when they moved from room to room in the command.

Taveras's contention was that Respondent never notified him that he was in need of personal time, particularly when he was assigned to prisoner transport. Respondent seems to downplay the importance of putting his team on notice when he realized that he would be away from his duties of prisoner transport for an extended period of time. Respondent never notified his supervisor or any other supervisor that he would be in the lounge area. Respondent testified that he told Cabrera, but Cabrera, when asked, did not give an immediate answer to Taveras as to Respondent's whereabouts. Cabrera was the arresting officer and may have been consumed with his own duties when Taveras made his inquiries. In addition, Cabrera is not a supervisor. The onus was on Respondent to keep his superior aware of where he would be, particularly if he needed to be away from the prisoner area for an extended period of time. Ironically, when Respondent was finished with his paperwork for his prisoners, he knew where his supervisor was because Taveras told the desk officer where he was going.

Certainly, it would seem to reason that if Taveras was concerned about Respondent's whereabouts that he would have the first floor searched to try to locate Respondent and be sure he was not in danger since no one on the team knew where he was. However, Taveras stated that he called Respondent's cell phone, made inquiries and no one knew where Respondent was and then Respondent appeared 30 minutes later stating that he was in the lounge, yet Respondent never informed Taveras that he needed personal time for any reason. The Court can understand Taveras' concern that he had prisoners ready for transport and the member of the service responsible to do that was unaccountable with no effort being made to reach Taveras with any explanation as to his

whereabouts. Taveras properly discharged the duty to transport the prisoners to other detectives on his team.

Accordingly, Respondent is found Guilty as charged.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 16, 1999. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has been found Guilty of being absent from his assignment without permission or police necessity for approximately 30 minutes. Respondent was assigned to prisoner transport and his superior could not locate him for 30 minutes. Even though Respondent stated that he was in the command, he never notified his supervisor that he needed personal time because he was not feeling well. His supervisor ended up reassigning prisoner transport to other detectives.

The Assistant Department Advocate asked for a penalty of the forfeiture of five vacation days. It must be noted that Respondent was initially offered a Command Discipline to resolve this matter with a warn and admonish, but he felt that he did not do anything wrong. However, this Court found that because the onus was on him to inform a supervisor if he needed an extended period away from his assignment of prisoner transport that Respondent was not without fault. Although there was no testimony that anything transpired with the prisoners during Respondent's 30 minute leave, his absence

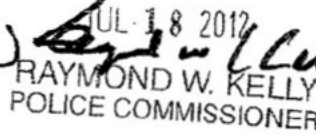
could have had tremendous ramifications on him, the prisoners, the rest of his team and his supervisor. At a minimum, other members of his team had to transport the prisoners to Bronx Central Booking. Thus, the Court agrees with the recommended penalty.

Accordingly it is recommended that Respondent forfeit five vacation days.

Respectfully submitted,



APPROVED

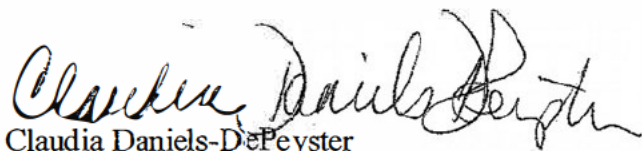
JUL 18 2012

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner -- Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE MICHAEL DYE
TAX REGISTRY NO. 924316
DISCIPLINARY CASE NO. 2011-3810

In 2009, Respondent received an overall rating of 3.5 "Competent/ Highly Competent" on his annual performance evaluation. In 2010, he received a rating of 4.0 "Highly Competent." Respondent has received no medals in his career to date. He has 420 career arrests, including 131 for felonies. In over 12 years of service, [REDACTED] [REDACTED]. He has no prior formal disciplinary record.

For your consideration.


Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials